

IP 03-0043-CR 1 B/F US v Johnson
Judge Sarah Evans Barker

Signed on 6/3/05

NOT INTENDED FOR PUBLICATION IN PRINT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

UNITED STATES OF AMERICA,
Plaintiff,

vs.

JOHN JOHNSON,
Defendant.

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)
)

IP-03-43-CR-01

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

UNITED STATES OF AMERICA,)	
Plaintiff,)	
)	
vs.)	IP-03-43-CR-01
)	
JOHN JOHNSON,)	
Defendant.)	

ENTRY GRANTING DEFENDANT’S MOTION TO SUPPRESS EVIDENCE

On February 27, 2003, Defendant John Johnson (“Johnson”) consented to a search of his house by Indiana Police Department (“IPD”) detectives, who found crack cocaine inside. Johnson attempted to suppress the evidence on the grounds that his consent was not voluntary and, regardless, it was tainted by his prior illegal detention. We held a hearing on this motion on April 21, 2003, and denied Defendant’s motion in an April 24, 2003, written entry. Defendant was subsequently convicted and sentenced to 240-months imprisonment, ten years supervised release, and a \$100 special assessment. Defendant appealed his conviction to the Court of Appeals. The appeal currently pends before the Seventh Circuit; however, in an August 18, 2004, opinion, the Seventh Circuit directed us to conduct additional fact-finding related to Defendant’s Motion to Suppress and to analyze the motion in light of any supplemental findings. We held that hearing on May 4, 2005, and the attorneys were permitted to submit subsequent briefing. For the reasons set forth in detail below, the Motion to Suppress is now GRANTED.

Factual Background

We incorporate without repeating here the factual summary detailed in the Seventh Circuit’s August 18, 2004, order. See United States v. Johnson, 107 Fed.Appx. 674 (7th Cir.

2004). That summary is supplemented by the following findings based on the testimony at the May 4, 2005, hearing.

Detective Stephon Blackwell (“Blackwell”) testified that he grew up in the neighborhood around the Defendant’s residence and accordingly knew the area to be crime-ridden and drug-infested. Prior to the arrest of Defendant, Det. Blackwell had been involved in an on-going narcotics investigation at a house two doors immediately west of Defendant’s residence. Det. Blackwell testified that, based on his experience in law enforcement he knew that guns are discovered in or around the residence of alleged drug dealers in eight out of ten drugs cases.

On the ride to Defendant’s residence, Det. Blackwell discussed Johnson’s criminal history with Det. Cliff Cole (“Cole”) which included Johnson’s prior drug arrest. Det. Cole recalled a shooting incident in the early 1990s in which Johnson may have been involved but was never convicted.¹

When Dets. Blackwell and Cole arrived at Johnson’s residence, they noticed a white car with its engine idling in the driveway, being approached by Katina Curry (“Curry”). Curry confirmed that Johnson lived at that address and that he was currently inside. Neither Det. Blackwell nor Det. Cole asked Curry any questions about the presence of firearms in the residence or whether Johnson was armed.

The intention of Dets. Blackwell and Cole was to speak with Johnson pursuant to a “knock and talk” procedure to see if they could obtain his voluntary consent to search his residence or to gather enough information to obtain a search warrant. As they talked at the

¹ This incident was described by Detective Cole during the original suppression hearing. See April 21, 2003, Hearing Transcript vol. 2, pp. 10-11.

entrance to the residence, Det. Blackwell informed Johnson of the reason for their presence² and requested consent to perform a search. Johnson allegedly began fidgeting with his hands, pacing back and forth, and speaking in a loud voice. Det. Blackwell stated that he found it strange that Johnson did not directly respond to his request for consent to search.

Det. Blackwell testified that, because it was cold outside and there was snow on the ground, he also found it strange that, when Johnson reentered his residence, he left his front door open. Blackwell said this caused him to believe that Johnson was not terminating the encounter but, rather, was planning to return. Johnson never asked the officers to leave his house.

When Johnson entered his house, he started walking down the hallway, whereupon Det. Blackwell removed his gun from its holster and said to Johnson: “If you go down that hallway, it now becomes an officer safety issue.” Blackwell testified that he was concerned that there might be a weapon in the house or around the corner in the hallway.³ Det. Blackwell testified that Johnson observed him as he reholstered the gun but was uncertain if Johnson saw the gun before that point in time. After Johnson turned around to return to the doorway and as Det. Blackwell reholstered his gun, Det. Blackwell testified that he no longer felt threatened because he could see Johnson’s hands and could observe that Johnson did not have a weapon. When Det. Cole returned to join Det. Blackwell and Johnson bringing with him a cellphone, Johnson told the officers they might as well come in, which they both did.

Det. Blackwell testified that once inside he did not see any guns or drugs in plain view in

² They had received a tip that Johnson was in possession of a large quantity of crack cocaine.

³ There is not a good description of the hallway of Defendant’s residence contained in the evidence adduced either at the original hearing or the supplemental hearing.

Johnson's residence, but that he did not look around because his focus remained entirely on Johnson.⁴

Legal Analysis

The Seventh Circuit has previously determined that, during the encounter on the night in question, Det. Blackwell "seized" Johnson.⁵ The Seventh Circuit's remand was for the purpose of our making supplemental findings on the narrow factual question of "whether the officers reasonably suspected that Johnson was engaged in or was about to engage in criminal activity." United States v. Johnson, 107 Fed.Appx. 674, 678 (7th Cir. 2004).

In determining whether reasonable suspicion existed, we examine "the *totality of the circumstances*--the whole picture[.]" U.S. v. Mancillas, 183 F.3d 682, 669 (7th Cir. 1999) (quoting United States v. Cortez, 449 U.S. 411, 417(1981)) (emphasis in Mancillas). In making this assessment, we judge the facts "against an objective standard: would the facts available to the officer at the moment of the seizure or the search 'warrant a man of reasonable caution in the belief' that the action taken was appropriate?" U.S. v. Mancillas, 183 F.3d 682, 698-69 (7th Cir. 1999) (quoting Terry v. Ohio, 392 U.S. 1, 21-22 (1968)).

The government cites several factors it says contributed to Det. Blackwell's reasonable belief that Johnson was about to obtain a weapon, including Det. Blackwell's knowledge from having grown up in the neighborhood around the Defendant's residence that the area was crime-

⁴ Det. Blackwell suggested that while he was focused on Johnson, his partner, Det. Cole, would likely have been free to observe the inside of Johnson's residence.

⁵ See United States v. Johnson, 107 Fed.Appx. 674, 677 (7th Cir. 2004) (holding: "We agree with the district court that Johnson was not seized when the detectives first approached the house to perform the stop and knock. . . . But then when Johnson tried to end the encounter by retreating into the house, Det. Blackwell stopped him in his tracks by pulling a gun out and warning Johnson not to walk further into the house.").

ridden and drug-infested; that prior to the arrest of Defendant, Det. Blackwell had been involved in an on-going narcotics investigation at a house two doors west of Defendant's residence; that Det. Blackwell knew, based on his experience as a law enforcement officer, that guns are discovered in or around a suspect's house in conjunction with most drugs cases; that the anonymous tip received by the officers indicated that Johnson would be in possession of a large quantity of crack cocaine; that Johnson had a prior conviction for cocaine; and that Det. Cole had informed Det. Blackwell of the shooting incident in the early 1990s in which Johnson may have been involved.⁶ The government claims these factors combined to create a reasonable suspicion on the part of Det. Blackwell that a firearm was present in Johnson's residence.

The government also points to several, specific aspects of Johnson's conduct which it claims contributed to this reasonable suspicion that Johnson was about to obtain a weapon, including that Johnson had been loud and agitated during his conversation with the IPD officers; that Johnson did not take any affirmative steps to terminate the conversation before he entered his house; and that, on a cold night when snow was on the ground, Johnson left his front door open when he entered his house.⁷

We are of the view that Det. Blackwell's conduct during the encounter at Johnson's residence did not reflect his reasonable suspicion that Johnson was engaged in or about to be engaged in criminal activity, but instead was primarily focused on obtaining Johnson's consent

⁶ This incident was described by Det. Cole during the original suppression hearing. See April 21, 2003, Hearing Transcript pp. 10-11.

⁷ The government maintains that the latter two facts contribute to a reasonable suspicion that Johnson did not intend to terminate the encounter by entering his house and that he intended to return to the porch shortly thereafter. However, the Seventh Circuit has already determined that, by entering his residence, Johnson attempted to terminate the encounter. Johnson, 107 Fed.Appx. at 677, 678.

to a search. We base our conclusion on the fact that, before approaching Johnson's residence, Det. Blackwell had not asked Curry about a likelihood that Johnson might be in possession of a firearm or whether there might be weapons present inside the residence. Det. Blackwell also never asked Johnson directly about the existence of guns on his person or in the residence. Moreover, Det. Blackwell's actions during the confrontation in the hallway indicate that his focus was actually on obtaining Johnson's consent, having testified that he no longer felt threatened once Johnson turned back around and came towards him, when Blackwell could again see Johnson's hands, despite the fact that Det. Blackwell knew there were several other individuals inside the residence who could have obtained a weapon and thus placed Det. Blackwell's safety at risk.⁸ After reholstering his gun, Det. Blackwell directed his partner to return to the squad car to contact their supervisor in an effort to determine whether there was sufficient information to obtain a search warrant, and, while waiting for Det. Cole to return, Det. Blackwell continued to inquire about Johnson's willingness to consent to a search of the residence.

In light of all the testimony adduced in this matter, and the conclusions already resolved by the Court of Appeals, we are now of the view that Det. Blackwell's display of his gun was intended by him to keep the conversation with Johnson going in hopes of eventually obtaining his consent to search. This was Det. Blackwell's essential motivation during the encounter. We do not believe that Det. Blackwell intended to effect a seizure of Johnson; however, the encounter is to be evaluated not from Blackwell's perspective but from the perspective of

⁸ At the least, several children were also present in the residence at that time and perhaps other adults. Det. Blackwell appears never to have ascertained whether these individuals presented any threat because his attention was exclusively focused on Johnson during the hallway confrontation.

Johnson, so regardless of Det. Blackwell's intent, when viewed from Johnson's vantage, the circumstances of this encounter substantially shifted when Blackwell's weapon was drawn. When Johnson turned around and saw the unholstered gun in Det. Blackwell's hand, he reasonably concluded that he had no choice other than to submit to the requests of the officers, and that he was not free to leave in light of Det. Blackwell's control over their encounter. Johnson knew at this point he was expected to submit.

Accordingly, Det. Blackwell's seizure of Johnson was not predicated on a reasonable suspicion that Johnson was "engaged in or was about to engage in criminal activity." His seizure thus did not comport with the requirements of the Fourth Amendment and was unlawful. See Terry, 392 U.S. at 21 (1968) (holding that "in justifying the particular intrusion the police officer must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion"). This illegal seizure of Johnson overrode and thereby invalidated the voluntariness of his subsequent consent to search, requiring suppression of the evidence obtained on the basis of the unconstitutional search. See Johnson, 107 Fed.Appx. at 677 (advising that "if Johnson was illegally seized, his consent was tainted by the illegal seizure"); Mapp v. Ohio, 367 U.S. 643, 648-49 (1961) (explaining that "the Fourth Amendment, although not referring to or limiting the use of evidence in court, really forbade its introduction if obtained by government officers through a violation of the amendment") (internal quotation omitted).

Conclusion

For the reasons explicated above, we rescind our prior Denial of Defendant Johnson's Motion to Suppress and now GRANT it. The Clerk of the Court is directed to transmit this order forthwith to the Seventh Circuit Court of Appeals for its consideration in the pending case. IT IS

SO ORDERED.

Date: _____

SARAH EVANS BARKER, JUDGE
United States District Court
Southern District of Indiana

Copy to:

Attorneys of Record.